

Hot Topics 1 – TILA and RESPA UPDATE

The HOEPA/TILA Amendments

Robert Cook

- **HOEPA Amendments – Do You Care?**
- **Higher Priced Mortgage Loans – Definition**
- **Higher Priced Mortgage Loans – Prohibitions**
- **Higher Priced Mortgage Loans – Requirements**
- **New Rules for All Mortgages**
- **Penalties for Violations**
- **Advertising Rules – A Quick Overview**

- Secured by the **consumer's principal dwelling**
- Not a construction loan
- Not a temporary or bridge loan of 12-months or less
- Not a reverse mortgage
- Not a HELOC
- With an APR that exceeds a trigger

- **APR exceeds “average prime offer rate” by**
 - 1.5 percentage points for first mortgages
 - 3.5 percentage points for second mortgages
 - As of the date the interest rate is set
- **Average prime offer rate – Board will publish**
- **Based on Freddie Mac Primary Mortgage Market Survey**
- **Published rates to include fixed and ARMs, with different terms and fixed rate periods**

HPMLs - Definition

•Examples for Week of May 15, 2008:

Product	APR	HPML Trigger 1st Mortgage	HPML Trigger 2nd Mortgage
30-Year Fixed	6.07%	7.57%	9.57%
15-Year Fixed	5.68%	7.18%	9.18%
One-year ARM	4.91%	6.41%	8.41%
2/1 ARM	5.27%	6.77%	8.77%
3/1 ARM	5.49%	6.99%	8.99%
5/1 ARM	5.82%	7.32%	9.32%

- **May not extend credit without regard to the borrower's ability to repay**
 - Consider current and reasonably expected income
 - Consider employment
 - Consider assets **other than the home**
 - Consider current obligations
 - Consider mortgage related obligations (escrow items)
 - Based on creditor's knowledge as of consummation
- **Verification**
 - Income must be verified by **third-party documentation**
 - Credit report may be used for verifying **most obligations**

HPMLs - Prohibitions

- Ability to Repay (cont.)
- “Presumption of compliance”
 - Ability to repay based upon highest **scheduled** payment in first seven years
 - Use **either** Debt to Income Ratio or Residual Income
 - Presumption **not available** if negative amortization or balloon payment in first seven years
- Safe Harbor – NO!
- Presumption is rebuttable
 - E.g. “very” high DTI ratio; “very” limited residual income
 - Secondary market has no assurance you complied

- No prepayment penalties unless:
- Otherwise permitted by law
- The terms of the loan provide:
 - Prepayment penalty term two years or less
 - Does not apply if creditor or an affiliate refinances
 - P&I payment may not change during the first four years
- Violation makes the loan **rescindable**

- Escrows required on **all first lien HPMLs**
- Must include taxes and insurance, including PMI
- Does not apply to coops – at all, or for insurance as to condos
- Consumers **may not waive**
- Consumers may cancel after the first year

New Rules for All Mortgages

- **Actually not all mortgage loans – only closed-end, secured by consumer’s principal dwelling**
- **Neither creditor **nor broker** may coerce an appraiser**
- **If creditor knows of coercion at or before consummation, creditor must use reasonable due diligence to confirm valuation**
- **Query, will creditors **always confirm valuation** before closing?**

New Rules for All Mortgages

- **Servicing Practices:**
- **Must credit payments as of day of receipt**
 - Or within five days if borrower does not follow instructions (“white payments”)
- **Must not pyramid late fees**
- **Must **provide** payoff statements within a reasonable time**
 - Generally within five days, must respond to someone acting for a consumer
- **Board **did not** adopt broker payment rules**

New Rules for All Mortgages

- **Early TIL Disclosures now required for all closed-end mortgage loans secured by a consumer's principal dwelling**
- **No longer just purchase-money loans**
- **No fees, other than a credit report fee, prior to receipt of the early TIL disclosures**
- **If disclosures are mailed, receipt is defined to be within three days**

Penalties for Violations

- HPML and New Mortgage Rules adopted under Section 129 (HOEPA)
- Standard TILA penalties, **plus** loss of all finance charges and other fees
- **No caps** on class action damages
- Rescission, but only for prepayment violation
- HOEPA assignee liability **does not** apply
- Assignees liability **only** if violation apparent on the face of the **disclosures** (and for rescission)

- **Closed-end Mortgage Credit**
- **Clear and conspicuous guidelines**
- **Additional information required when disclosing interest rates**
- **Additional information required when disclosing payment amounts**

- **Limits on use of the term “fixed”**
- **Limits on ads comparing hypothetical and actual rates and payments**
- **Prohibits false references to government-backed loans**
- **Limits references to the current lender**
- **Prohibits false claims of debt elimination**
- **Prohibits foreign language ads with English disclosures**
- **Limits the use of the term “counselor”**

- **Clear and conspicuous guidelines**
- **Requirements for “promotional rate” advertisements**

Thank you

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